

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to exemption for commercial enterprises and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 225, “Resale and Processing Exemptions Primarily of Benefit to Retailers,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.3 as amended by 2018 Iowa Acts, Senate File 2417.

Purpose and Summary

The Department proposes this rule making to implement an exemption from sales tax added to Iowa Code section 423.3 by 2018 Iowa Acts, Senate File 2417, section 188. Iowa Code section 423.3(104) exempts from sales tax specified digital products, prewritten computer software, and certain enumerated services sold or furnished to a commercial enterprise when used exclusively by the commercial enterprise. The exemption defines “commercial enterprise” to mean the same as it is defined in Iowa Code section 423.3(47)“d”(1) but also adds professions and occupations. Iowa Code section 423.3(104) also directs the Director of the Department to define “de minimis” and “noncommercial purposes” as used in the exemption.

This proposed rule making provides definitions of those two terms and provides some examples to illustrate when a product is being exclusively used by a commercial enterprise. Prior to publication of this Notice of Intended Action, the Department shared the proposed rule with interested stakeholders and received no comments or concerns.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The impact of the exemption itself was not represented individually by the Legislative Services Agency Fiscal Note for 2018 Iowa Acts, Senate File 2417, but was incorporated into the Fiscal Note’s calculation of the additional revenue to be generated by the taxation of “digital goods” generally. Table 7 of the Fiscal Note projected additional revenue collection related to “digital goods” to be \$11.8 million for FY 2019, \$26.2 million for FY 2020, \$28.8 million for FY 2021, \$31.1 million for FY 2022, \$33.6 million for FY 2023, and \$35.6 million for FY 2024.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 20, 2019. Comments should be directed to:

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.725.2294
Email: tim.reilly@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Adopt the following **new** rule 701—225.8(423):

701—225.8(423) Exemption for commercial enterprises.

225.8(1) *Commercial enterprise as purchaser.* A purchaser seeking this exemption must be a commercial enterprise as defined in Iowa Code section 423.3(104)“b”(1). For purposes of Iowa Code section 423.3(104)“b”(1), the terms “profession” and “occupation” mean the same as defined in rule 701—paragraph 230.18(3)“c.”

225.8(2) *Exclusive use by a commercial enterprise.* A commercial enterprise must be the exclusive user of the product. Use in the ordinary course of a commercial enterprise’s business constitutes exclusive use by a commercial enterprise. Uses by all other users, including entities other than commercial enterprises, do not constitute uses by a commercial enterprise.

a. Examples of exclusive uses. The following are examples of exclusive uses by a commercial enterprise in the normal course of business:

- (1) Word processing software loaded onto employees’ work computers.
- (2) Software that displays a menu on a tablet used by customers at a restaurant.
- (3) Information services used by temporary employees of a commercial enterprise in the ordinary course of business.

b. Examples of disqualifying nonexclusive uses. The following are examples of uses that are not exclusive uses by a commercial enterprise or uses in the ordinary course of business:

- (1) Software shared by a commercial enterprise with an entity that is not a commercial enterprise.
- (2) Video games that customers may purchase on a tablet that is provided at a restaurant for customers to use while waiting for service.

225.8(3) *Noncommercial purposes.* “Noncommercial purposes” means purposes that are outside of carrying out the business purpose of a commercial enterprise or purposes outside of the ordinary course of business of a commercial enterprise. The following are examples of uses for noncommercial purposes:

- a.* Personal and recreational use.
- b.* Holding a product for future use for a noncommercial purpose.

225.8(4) *De minimis.* “De minimis” means an amount of use of a product for noncommercial purposes that, when considering the product’s value and the frequency with which the use for noncommercial purposes occurs during the product’s total use time, is so small as to make accounting for that use unreasonable or impractical. Whether a use is de minimis is a fact-based determination that shall be made on a case-by-case basis.

This rule is intended to implement Iowa Code section 423.3(104).